



## JURISDICTION AND VENUE

4. Upon information and belief, Cuginos has created actual confusion and continues to create a likelihood of confusion between Cuginos's adult cabaret operations in Milwaukee, Wisconsin and SRCW's worldwide operations under the SPEARMINT RHINO mark. Accordingly, Cuginos conducts its infringing activity in the State of Wisconsin and in this District. Defendant Cuginos continues to conduct this infringing activity in Milwaukee, Wisconsin causing harm to Plaintiff, SRCW, in this jurisdiction.

5. As a result of these actions Cuginos has purposefully availed itself of the laws of Wisconsin, and the privilege of conducting business within Wisconsin. At least a portion of the infringement claims alleged herein arise out of or are related to the foregoing activities of Cuginos in Wisconsin.

6. These actions by Cuginos in establishing and incorporating a Wisconsin business are substantial and not isolated activities that establish minimum contacts.

7. SRCW has suffered injury in Wisconsin as a result of Cuginos's infringement alleged herein.

8. This court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b) because this action arises under the Trademarks Laws of the United States, including 15 U.S.C. §§ 1114-1118, 1125(a), and 1125(d).

9. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

## PLAINTIFF'S BUSINESS

10. SRCW is the owner of several Federal Trademarks involving the "Rhino" name and symbol, and has been using the SPEARMINT RHINO mark and the "Rhino" name for adult nightclub and adult cabaret operations since 1992.

11. SRCW is a worldwide chain of upscale adult cabarets that operates in venues throughout the United States, United Kingdom and Australia. As a result, the SPEARMINT RHINO marks and the "Rhino" name represent substantial goodwill in the operations of SRCW in the United States and throughout the world.

12. The SPEARMINT RHINO marks owned by SRCW are famous, and have been referenced in popular culture, including on the Tonight Show with Jay Leno, on the sitcom Two and a Half Men, in television shows South Park and The Girls Next Door, and in the movie Matchstick Men, and have also been the subject of parody on television shows and movies.

13. As a result of SRCW's continuous and substantial use of the SPEARMINT RHINO marks, several federal trademark registrations have been issued, and cover both the SPEARMINT RHINO name as well as associated rhinoceri imagery.

14. U.S. Trademark Registration No. 2129965 is owned by SRCW and has a registration date of January 20, 1998 ("the '965 registration"). The '965 registration is in international class 42 for adult cabarets, and lists a first use and first use in commerce as of October 15, 1992. Pursuant to Section 15 of the Lanham Act (15 U.S.C. §1065) the '965 registration is incontestable.

15. U.S. Trademark Registration No. 2712739 is owned by SRCW and has a registration date of May 6, 2003 ("the '739 registration"). The '739 registration is in international classes 9, 25, 41, and 42 and lists various goods and services including adult entertainment services in the nature of adult cabarets, nightclubs and show clubs featuring nude, semi-nude, erotic dancing, and lap and table dancing, as well as restaurant and bar services, including preparation of serving food or drink. The '739 registration lists a date of first use and a date of first use in commerce for international classes 41 and 42 as October 15, 1992. Pursuant to §15 of the Lanham Act (15 U.S.C. §1065) the '739 registration is incontestable.

16. U.S. Trademark Registration No. 3189326 is owned by SRCW and has a registration date of December 26, 2006 ("the '326 registration"). The '326 registration lists restaurant and bar services; preparation and serving of food and drink with a first use and first use in commerce of October 15, 1992.



17. U.S. Trademark Registration No. 3189323 is owned by SRCW and has a registration date of December 26, 2006 ("the '323 registration"). The '323 registration lists entertainment services namely, adult cabarets, nightclubs, and show clubs featuring nude, semi-nude, erotic dancing, and lap dancing with a first use and first use in commerce of June 2001.




18. U.S. Trademark Registration No. 3189324 is owned by SRCW and has a registration date of December 26, 2006 ("the '324 registration"). The '324 registration lists restaurant and bar services; preparation and serving of food and drink with a first use and a first use in commerce of June 2001.

19. SRCW is also the owner of Registration No. 3196409, 3205553, 3196410 3189325, and 3205552 which relate to the SPEARMINT RHINO name and marks.

20. The registrations noted above constitute prima facie evidence of the protectability and of SRCW's exclusive right to use the SPEARMINT RHINO mark throughout the United States. Copies of the registrations are attached as Exhibits A-J.

21. SRCW also owns U.S. Trademark Application No. 85703563 for the mark THE RHINO and U.S. Trademark Application No. 85703554 for the mark RHINO ROOM, both for services of adult entertainment in the nature of live nude, semi-nude, erotic, lap and table dancing; adult cabarets; night clubs; show clubs; restaurant and bar services; preparation and serving of food and drink. Copies of these applications are annexed hereto as Exhibits K and L. SRCW's pertinent registrations and application are listed on the following table:

MARK	REGISTRATION NO.	GOODS AND SERVICES	FIRST USE
SPEARMINT RHINO	2,129,965	(IC 041) adult cabarets	10/15/1992
	2,712,739	(IC 041) Adult entertainment services in the nature of adult cabarets, nightclubs and show clubs featuring nude, semi-nude, erotic dancing, and lap and table dancing.  (IC 042) Restaurant and bar services; preparation and serving of food and drink.  *Additional Goods listed in IC 009 and IC 025*	10/15/1992
SPEARMINT RHINO	3,189,326	(IC 043) Restaurant and bar services; preparation and serving of food and drink.	10/15/1992
	3,196,409	(IC 016) Paper goods, namely napkins.	10/15/1992
SPEARMINT RHINO	3,196,410	(IC 016) Paper goods, namely napkins.	10/15/1992
SPEARMINT RHINO	3,205,553	(IC 025) T-shirts and hats; lingerie, namely panties, g-strings, brassieres and corsets for semi-nude and erotic dancers; golf clothing, namely golf shirts, jackets, vests and caps.	05/31/2000

	3,189,323	(IC 041) Entertainment services namely, adult cabarets, nightclubs and show clubs featuring nude, semi-nude, erotic dancing, and lap and table dancing.	06/2001
	3,189,324	(IC 043) Restaurant and bar services; preparation and serving of food and drink.	06/2001
SPEARMINT RHINO	3,189,325	(IC 009) Motion picture films, video tapes and DVDs featuring adult entertainment.	06/2001
	3,205,552	(IC 025) T-shirts and hats; lingerie, namely panties, g-strings, brassieres and corsets for semi-nude and erotic dancers; golf clothing, namely golf shirts, jackets, vests and caps.	06/2001
THE RHINO	Application No. 85703563	(IC 041) Adult entertainment in the nature of live nude, semi-nude, erotic, lap and table dancing; adult cabarets; night clubs; show clubs  (IC 043) Restaurant and bar services; preparation and serving of food and drink	

<p style="text-align: center;">RHINO ROOM</p> <p>*Application voluntarily amended on 08/23/2012 to remove "THE" from the original application (See, Compl. Ex. L).</p>	<p>Application No. 85703554</p>	<p>(IC 041) Adult entertainment in the nature of live nude, semi-nude, erotic, lap and table dancing; adult cabarets; night clubs; show clubs</p> <p>(IC 043) Restaurant and bar services; preparation and serving of food and drink</p>	
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22. SRCW's already expansive presence in interstate commerce continues to expand. SRCW recently opened a venue in Iowa and is currently awaiting several additional expansion opportunities in the Midwest, including in Wisconsin and Illinois.

23. Accordingly, SRCW has made substantial efforts to establish and maintain significant consumer goodwill in the adult cabaret services offered under the SPEARMINT RHINO marks and under the "Rhino" name throughout the United States.

24. SRCW and its licensees has spent nearly \$14.5 million in advertising and promoting the operations of its adult cabarets under the SPEARMINT RHINO marks between 2006 and the present in a successful effort to establish brand awareness and goodwill in the SPEARMINT RHINO trademarks. SRCW's advertising and promoting has appeared in at least print, billboard, flyers, key word search engine advertisements, and trade show appearances.

#### DEFENDANTS' BUSINESS

25. Cuginos promotes its business operations from a web domain at [www.rhinomilwaukee.com](http://www.rhinomilwaukee.com) as the Rhino Adult Nightclub as follows:



A screenshot of the Cuginos website is attached hereto as Ex. M.

26. Cuginos has no affiliation with SRCW.
27. Cuginos has no relationship with SRCW.
28. Cuginos is not authorized by SRCW through any agreement to use the "Rhino" name or associated rhinoceri imagery.
29. Cuginos has been doing business as "Cuginos" or "Rhino Adult Nightclub" since July 11, 2012.
30. On July 16, 2012 a representative of SRCW contacted Cuginos concerning its unauthorized use of the "Rhino" name as causing confusion and constituting a false designation of origin. That letter is annexed hereto as Exhibit N.
31. On or about July 23, 2012, a representative from SRCW had a telephone conversation with the manager of Cuginos' Rhino Adult Night Club, "Biker Dave".
32. More than one person has asked "Biker Dave" if Cuginos' Rhino Adult Night Club is associated with Spearmint Rhino. (Exhibit O).
33. Cuginos offers nearly identical services under the confusingly similar "Rhino" name in an effort to palm off, create confusion, or deceive customers thinking of SRCW's SPEARMINT RHINO marks.
34. Cuginos's offer of nearly identical services under the confusingly similar "Rhino" name has caused actual confusion as to Cuginos's affiliation, sponsorship and/or association with SRCW. Additional likelihood of confusion is imminent.



35. Cuginos services offered at the Rhino Adult Night Club, upon information and belief, are of inferior quality to the nearly identical services offered by SRCW at its adult nightclubs across the United States. By offering entertainment services under the "Rhino" name, Cuginos tarnishes SRCW's famous SPEARMINT RHINO marks.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

36. Plaintiff SRCW hereby incorporates paragraphs 1-35 as if fully set forth herein.

37. Beginning on a date prior to any date upon which Defendant can rely, SRCW used the SPEARMINT RHINO marks in association with the marketing, promotion, and sale of its services, including, but not limited to, adult entertainment services in the nature of adult cabarets, adult nightclubs and show clubs featuring nude, semi-nude, erotic dancing, and lap and table dancing, as well as restaurant and bar services and the preparation of serving food or drink.

38. As a result, SRCW is the owner of rights and the SPEARMINT RHINO marks used in association with such services throughout the United States. As a result, the SPEARMINT RHINO marks have become a valuable asset of SRCW and a symbol of Plaintiff's goodwill in the relevant industry.

39. As a result of years of use and exclusive offering of services under the SPEARMINT RHINO marks, the "Rhino" name is a recognized name and the SPEARMINT RHINO marks are recognized in the relevant industry as exclusively associated with Plaintiff.

40. Defendant's conduct including its unauthorized use of the "Rhino" name for operations providing substantially similar services to SRCW's services created actual confusion and further created a likelihood of confusion with Plaintiff's registered SPEARMINT RHINO marks with the intention of deceiving and misleading customers, the relevant industry, and the public at large or wrongfully trading on the goodwill and reputation of Plaintiff in violation of 15 U.S.C. §1114.

41. Defendant's conduct including its use of the "Rhino" name for an adult nightclub of a substantially similar product offering to SRCW also creates a likelihood of confusion with SRCW's SPEARMINT RHINO marks in violation of 15 U.S.C. § 1125(a).

42. Defendant was aware of SRCW's business and the SPEARMINT RHINO marks and use of the "Rhino" mark well before the Defendants engaged in the infringing activities.

43. Defendant's infringement of the SPEARMINT RHINO marks is an intentional attempt to trade on the goodwill associated with the goods and services offered by SRCW.

44. As a direct and proximate result of Cuginos's actions, SRCW has been damaged, including damage to its business and reputation, and will continue to be damaged until Cuginos ceases use or is enjoined from said use.

COUNT II – COMMON LAW TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF  
ORIGIN AND UNFAIR COMPETITION UNDER 15 U.S.C. §1125

45. Plaintiff SRCW hereby incorporates paragraphs 1-44 as if fully set forth herein.

46. Cuginos's operations, including offering substantially similar services so SRCW under the "Rhino" name at the physical location of the operations and through the [www.rhinomilwaukee.com](http://www.rhinomilwaukee.com) domain is confusingly similar to at least the adult entertainment services, including, adult cabarets, adult nightclubs, show clubs, and restaurant or bar services offered by SRCW under the SPEARMINT RHINO marks. Defendant's use of this confusingly similar name constitutes deception as palming off as being legitimately affiliated or connected with or otherwise sponsored or authorized by SRCW. As a result, the public has been deceived and Cuginos has received income and profits, that but for this deception, Cuginos would not have received. Such conduct constitutes unfair competition, false designation of origin and trademark infringement under the common law applicable in the State of Wisconsin.

47. Cuginos's conduct conducting substantially similar operations to SRCW under the "Rhino" name at the physical location of the operations and through the [www.rhinomilwaukee.com](http://www.rhinomilwaukee.com) domain creates a likelihood of consumer confusion. Defendant's use has deceived the public to enrich themselves at the consuming public's and SRCW's expense.

48. SRCW has extensively used the SPEARMINT RHINO mark and the "Rhino" name in connection with adult cabaret, adult entertainment services, adult nightclubs and show clubs, and restaurant or bar services, among other goods, and services, across the United States, and adopted such use across the United States long before Defendant began operations under the "Rhino" name. By reason of SRCW's consistent and extensive use, the "Rhino" name and the SPEARMINT RHINO marks are uniquely associated with SRCW, and identifies SRCW as the source of the recited services under the "Rhino" name and SPEARMINT RHINO marks throughout the United States.

49. Defendants knew of SRCW's SPEARMINT RHINO marks for the recited services, before Defendants own adoption and use of the "Rhino" name.

50. Defendants' use of "Rhino" name and the [www.rhinomilwaukee.com](http://www.rhinomilwaukee.com) domain has caused, or is likely to cause, confusion or misunderstanding, or to deceive customers, consumers, and the general public, as to the origin, sponsorship, or other association between SRCW and Cuginos's unauthorized offer of substantially similar services. This confusion, misunderstanding, and deception has harmed the extensive consumer goodwill that SRCW has worked to develop with consumers across the United States. SRCW is without adequate remedy at law for this damage to consumer goodwill, and will continue to suffer damage until Cuginos ceases or is enjoined from its infringing use of the "Rhino" name.

51. By reason of the foregoing, Defendants have willfully infringed and continue to willfully infringe on SRCW's common law rights in the "Rhino" name and the SPEARMINT

RHINO marks. Defendant's unlawful conduct is greatly and irreparably damaging to SRCW, and will continue to irreparably damage SRCW, unless the Defendant is enjoined by this Court.

COUNT III TRADEMARK DILLUTION UNDER 15 U.S.C. §1125(c) AND COMMON LAW

TRADEMARK DILLUTION

52. Plaintiff SRCW hereby incorporates by reference paragraphs 1-51 as if fully set forth herein.

53. One or more of the SPEARMINT RHINO marks have become famous and distinctive in the United States and worldwide to the extensive, continuous, and exclusive use of the marks in connection with SRCW's services.

54. Despite knowledge of SRCW's famous trademarks, Defendant, Cuginos, used and continues to use in commerce spurious and colorable imitations thereof in connection with the advertisement, promotion and sale of its services.

55. Defendant's actions as described herein have caused and continue to cause irreparable injury to, and a likelihood of delusion of the distinctive quality of the famous SPEARMINT RHINO marks in violation of SRCW's rights under 15 U.S.C. §1125(c) and common law. Defendant's wrongful use of SRCW's famous trademarks is like to dilute the distinctive nature of those marks and to tarnish the reputation built with the marks.

56. Defendant used and continues to use in commerce the SPEARMINT RHINO marks and/or closely similar marks willfully and with the intent to dilute the marks, and with the intent to trade on the reputation and goodwill of SRCW and the SPEARMINT RHINO marks. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. §117(a).

57. As a direct and proximate result of Defendant's conduct, SRCW has suffered irreparable harm to the valuable SPEARMINT RHINO marks, and other damages in an amount

to be proved at trial. Unless Defendant is enjoined, the valuable SPEARMINT RHINO marks will continue to be irreparable harmed and likely to be diluted.

58. SRCW has no adequate remedy that will compensate for the continued and irreparable harm that it will suffer if Defendant's actions are allowed to continue.

PRAYER FOR RELIEF

WHEREFORE, plaintiff SRCW prays for the following relief:

A. That the Court adjudge at least the following SRCW Federal Trademark Registrations willfully infringed by Cuginos:

- (1) U.S. Reg. No. 2712739;
- (2) U.S. Reg. No. 3189326;
- (3) U.S. Reg. No. 2129965;
- (4) U.S. Reg. No. 3189323; and
- (5) U.S. Reg. No. 3189324

B. That the Court adjudge that Defendants have unfairly competed with SRCW under 15 U.S.C. § 1125(a), by the confusingly similar use of the "Rhino" name and rhinoceri imagery.

C. That defendant, Cuginos, its officers, agents, servants, employees, and attorneys, successors and assigns, and all those in active concert or participation with any of them who receive actual notice of the order by personal service or otherwise, be enjoined from:

- (1) Using any name, mark, trade dress, indication of source or other identifier that is similar in whole or in part to SRCW's SPEARMINT RHINO mark, including, but not limited to use of the "Rhino" name;

- (2) Doing any other act or thing likely to confuse, mislead, or deceive others into believing that Cuginos, or their business or services, emanate from or are connected with, sponsored by, or approved by SRCW.
- (3) Aiding or abetting any other person in committing any of the acts prohibited by (1) and (2) above.

D. That Cuginos be ordered to turn over to SRCW or destroy all products, kits, labels, signs, prints, packages, containers, stationery, promotion materials, advertising and other items, whether in physical, electronic, magnetic or other form, bearing any name, mark, trade dress, indication of source or other identifier that is similar in whole or in part to SRCW's SPEARMINT RHINO, including, but not limited to the "Rhino" name and rhinoceri imagery.

E. That the Court order the transfer of the [www.rhinomilwaukee.com](http://www.rhinomilwaukee.com) domain to SRCW .

F. That SRCW be awarded all profits derived by Defendant by reason of their infringement of SRCW's trademark rights and Cuginos's unfair competition, and all other sums by which Cuginos has been unjustly enriched.

G. That SRCW be awarded all damages incurred by reason of Defendant's trademark infringement of SRCW's rights, and Defendants' unfair competition.

H. That Defendant be required, in accordance with Section 34(a) of the U.S. Trademarks Act, 15 U.S.C. § 1116(a), to file with the Court, and serve upon SRCW, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the terms of any injunction entered by this Court.

I. That this case be deemed exceptional under 15 U.S.C. § 1117(a), and that SRCW be awarded increased damages.

J. That an assessment of costs and attorneys' fees for this action be made against Defendants.

J. That plaintiff be granted such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial.

Dated this 24<sup>th</sup> day of August, 2012.

Respectfully submitted,

s/Aaron T. Olejniczak

Aaron T. Olejniczak (#1034997)

Ryann H. Beck (#1079309)

ANDRUS, SCEALES, STARKE & SAWALL, LLP

100 East Wisconsin Avenue, #1100

Milwaukee, WI 53202

Telephone: 414-271-7590

Facsimile: 414-271-5770

E-mail: aarono@andrusiplaw.com

E-mail: rbeck@andrusiplaw.com

Attorneys for Plaintiff

Of Counsel:

Peter E. Garrell (California Bar No.: 155177)

Garrell Law, P.C.

1875 Tandem Way

Norco, CA 92860-3606

Telephone: 714-451-4148

Facsimile: 714 451 4148